

US EPA RECORDS CENTER REGION 5



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ASSET PURCHASE AGREEMENT

among

**ORBITRON INDUSTRIES, INC., Seller,
LONGTERM INDUSTRIES, INC., L.E.C. CAPITAL CORPORATION,
ORBITRON PRODUCTS, INC.,
and SCOTT LEFKY,
Shareholders of Seller,
and
MEISE, INC., Purchaser**

Dated: August 31, 1993

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PRODUCTION SERVICES AGREEMENT

THIS AGREEMENT is made and executed this 1st day of September, 1993 between ORBITRON INDUSTRIES, INC., an Indiana corporation, having offices located at 4101 Edison Lakes Parkway, Suite 160, Mishawaka, Indiana 46545 ("Orbitron"), and MEESA, INC., an Indiana corporation, having its principal place of business at 535 N. Midland Avenue, Saddle Brook, New Jersey 07662 ("Meesa").

WHEREAS, Orbitron has been engaged in the business of the manufacture and sale of rotational molded products (the "Products"); and

WHEREAS, Meesa has acquired from Orbitron pursuant to an Asset Purchase Agreement dated August 31, 1993 (the "Purchase Agreement"), substantially all of the raw materials, work-in-process and finished goods inventory (collectively "Inventory") and the machinery, tools, dies, molds, and other equipment (collectively, "Equipment") and certain other assets previously used by Orbitron in the manufacture and/or sale of the Products; and

WHEREAS, for the duration of this Agreement, Meesa desires to have Orbitron perform certain production and related services for Meesa upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereby agree as follows:

1. Inventory and Machinery. Meesa shall provide to Orbitron at Orbitron's manufacturing facility located at 901 South Main Street, Delphos, Ohio (the "Facility"), the Inventory, Equipment, supplies and other items that Meesa deems necessary to manufacture certain of the Products (the "Work") as designated by Meesa in reasonable quantities and within reasonable time schedules to be periodically established by Meesa, taking into consideration the number of employees available to Orbitron, the items of machinery remaining, the overall level of work to be performed and other factors relating to the transition of production from the Facility to facilities of Meesa ("Transition Factors"). Title to and ownership of all Inventory, Equipment, supplies and other items used to manufacture the designated Products, and title to and ownership of such Products, shall remain in the name of Meesa.

2. Labor Services. Orbitron shall provide a labor force for the Work, subject to the Transition Factors. During the term of this Agreement, the labor force of Orbitron shall consist of hourly production line workers, material handlers, supervisors, administrative and support workers and other personnel (collectively, "the Workers"), in quantity and composition established by Meesa from time to time and as notified by Meesa to Orbitron in writing, but in all cases at levels of production and

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a trade secret
of "meesa"

management workers reasonably needed to produce at the levels expected by Meese. Wage rates and associated fringe benefit costs for the Workers for which Orbitron seeks reimbursement shall remain at the same level as of the date of this Agreement, unless otherwise mutually agreed upon by Orbitron and Meese in writing.

3. Status and Supervision of Workers. Meese and Orbitron agree that all Workers employed by Orbitron pursuant to this Agreement shall be and shall remain employees of Orbitron and not of Meese. Nothing contained in this Agreement shall be construed to make Orbitron or any Workers hired by it employees or agents of Meese, it being expressly agreed that Meese and Orbitron will remain as independent contractors with respect to each other. Supervision of the Workers and all other services to be performed by Orbitron hereunder shall be performed solely by Orbitron, provided, however, that all decisions regarding supervision of the Work shall be made solely by Meese.

4. Service Incentive. For the duration of the Term (as hereinafter defined), Meese shall pay Orbitron, on a monthly basis, an amount equal to
 * of net sales
 of the Products produced pursuant to the terms hereof for such month (prorated for any period of less than one month) (the "Service Incentive"), provided that Orbitron has substantially performed its services in accordance with this Agreement. The Service Incentive shall be paid to Orbitron within ten (10) days of the end of each month. Products shall be deemed sold when invoiced to the customer.

5. Reimbursement of Expenses. Meese shall pay to Orbitron all expenses incurred by Orbitron in providing services under this Agreement, including, but not limited to, wages, salaries, pension contributions, payroll taxes and employee health and worker's compensation insurance premiums based on the rates in effect on August 31, 1993, and Orbitron's operating cash expenses in connection with its lease of the facility to Meese (provided, however, that Orbitron will promptly remit to Meese any rebate or refund of premiums received under such employee health worker's compensation insurance) (collectively, "Expenses").

6. Method of Reimbursement. Meese shall reimburse Orbitron for Expenses upon notice in writing from Orbitron of the amount of Expenses incurred by Orbitron for the then current payroll period, which notice shall be given at least two (2) business days in advance. Meese will deposit by wire transfer, in the Orbitron payroll disbursement account, immediately available United States funds in an amount equal to the Payroll Expenses so incurred. All other Expenses will be reimbursed within ten (10) days after the close of the month during which they were incurred. Each notice regarding amounts sought to be reimbursed shall be in sufficient

detail so as to indicate the Payroll Expenses attributable to each individual Worker.

7. Insurance. Orbitron agrees that it will carry insurance against property damage and personal injuries to Meese's, Orbitron's or any subcontractors' agents or employees or to any third party while they are present at the facility or while performing services pursuant to this Agreement. Such insurance shall be in minimum amounts of \$1,000,000 per occurrence with respect to liability for property damage, \$1,000,000 per occurrence with respect to personal injuries, and as required Ohio statutory levels for workmen's compensation insurance. All such insurance shall be issued by companies reasonably acceptable to Meese and the policies therefor shall be endorsed to provide that any such policies may not be cancelled without at least thirty (30) days' written notice to Meese.

8. Indemnification.

(a) Meese agrees to indemnify Orbitron and its successors, assigns and affiliates and present and future directors, officers, agents and employees against, and hold them harmless from, all claims, losses, deficiencies, liabilities, fines penalties, costs, damages and expenses, including but not limited to reasonable legal fees and costs of litigation (hereinafter collectively referred to as "damages") resulting from, relating to, or arising out of (i) any claim for injury or damage resulting from the use of the Products produced under and in accordance with the terms of this Agreement by any person, except to the extent such damages are the result of willful misconduct or gross negligence on behalf of Orbitron; (ii) any breach of any covenant, warranty, representation or agreement made by or to be performed by Meese pursuant to this Agreement; or (iii) any claim or third party liabilities or obligations arising out of any of the acts or omissions, during the term, of any of the workers related to this Agreement, except to the extent such damages are the result of willful misconduct or gross negligence on behalf of Orbitron.

(b) Orbitron agrees to indemnify Meese and its successors, assigns and affiliates and present and future directors, officers, agents and employees against, and hold them harmless from, all Damages (which shall also include benefit claims and benefit payments) resulting from, relating to, or arising out of (i) the collective bargaining agreement referred to in Section 2.16 of the Purchase Agreement, (ii) the benefit plans referred to in Section 2.16 of the Purchase Agreement, (iii) any breach of any covenant, warranty, representation or agreement made by or to be performed by Orbitron pursuant to this Agreement, or (iv) claims (asserted in litigation or otherwise) by governmental agencies or

other third parties against Meese based on any violation of any laws or regulations related to occupational safety and health that relate to conditions at the facility that existed prior to the commencement date of this Agreement, whether or not such conditions have continued or are continuing subsequent to such commencement date.

(c) Promptly after any party hereto (hereinafter, the "Indemnified Party") has received notice of or has knowledge of any claim by a person not a party to this Agreement ("third person") of the commencement of any action or proceeding by a third person, the Indemnified Party shall, if a claim with respect thereto is to be made against any party obligated to provide indemnification pursuant hereto (hereinafter, the "Indemnifying Party"), give the Indemnifying Party written notice of such claim or the commencement of such action or proceeding. Such notice shall state the nature and basis of such claim and, if ascertainable, the amount thereof. In each such case, the Indemnified Party agrees to give such notice to the Indemnifying Party promptly; provided, however, that the failure of the Indemnified Party to give such notice shall not excuse the Indemnifying Party's obligation to indemnify except to the extent the Indemnifying Party has suffered damage or prejudice by reason of the Indemnified Party's failure to give, or delay in giving, such notice. The Indemnified Party shall have the right, with the prior written consent of the Indemnifying Party, to compromise or defend such third person claim, at the expense of the Indemnifying Party. After receipt of such notice from the Indemnified Party, the Indemnifying Party shall acknowledge in writing its obligation to indemnify in respect of such claim, and the Indemnifying Party may, at its expense, participate in the defense of such third person claim. No such third person claim shall be settled by the Indemnified Party without the consent of the Indemnifying Party.

(d) The indemnification obligations under this Agreement shall survive any expiration or termination of this Agreement.

9. Term of Agreement. This Agreement will commence immediately following the Effective Time under the Purchase Agreement and will continue until and will terminate on the earlier of (i) December 31, 1993, or (ii) fifteen (15) days after written notice of termination is sent by Meese to Orbiteon (the "Term").

10. Miscellaneous.

10.1 Notice. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed duly given to any party (a) upon delivery to the address of such party specified below if delivered in person or by courier or if

sent by certified or registered mail (return receipt requested), postage prepaid, or (b) upon dispatch if transmitted by telecopy or other means of facsimile, in any case to the parties at the following addresses or telecopy numbers, as the case may be:

If to Orbitron: Orbitron Industries, Inc.
4101 Edison Lakes Parkway
Mishawaka, Indiana 46548
Attention: Mr. Thomas F. Cooper, President
Telecopy No. 219-273-0918

If to Neese: Neese, Inc.
835 North Midland Avenue-
Saddle Brook, New Jersey 07662
Attention: Mr. Ronald C. Midilli, President
Telecopy No. 201-796-5820

or to such other address or telecopy number as any party may designate by written notice in the aforesaid manner.

10.2 Assignability: Benefit. This Agreement shall not be assignable by any of the parties hereto without the prior written consent of the other parties; provided, however, that Neese may assign all or part of its obligations hereunder to any wholly-owned subsidiary of Neese. This Agreement shall inure to the benefit of and be binding upon the successors and any permitted assigns of the parties.

10.3 Governing Law. The internal laws, not the conflicts-of-laws rules, of the State of New Jersey will govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

10.4 Entire Agreement. This Agreement contains the entire agreement among the parties hereto with respect to the transactions contemplated herein.

10.5 Waiver. Any failure of Neese or Orbitron to comply with any obligation, covenant, agreement or condition herein may be waived in writing by Neese or Orbitron, respectively, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

10.6 Amendment. This Agreement may be amended, modified or supplemented only by written agreement of Meese and Orbitron.

10.7 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

10.8 Severability. If any provision of this Agreement shall hereafter be held to be invalid or unenforceable for any reason, such provision shall be reformed to the maximum extent permitted to preserve the parties' original intent, failing which, such provision shall be severed from this Agreement with the balance of this Agreement continuing in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

ORBITRON INDUSTRIES, INC.

By: 

Thomas F. Cooper
President

MESE, INC.

By: 

Ronald C. Widall
President

ASSET PURCHASE AGREEMENT

AGREEMENT made as of the 31st day of August, 1993 among ORBITRON INDUSTRIES, INC., an Indiana corporation, having its principal place of business at Suite 160, 4101 Edison Lakes Parkway, Mishawaka, Indiana 46545 ("Seller"), LONGTERM INDUSTRIES, INC., an Illinois corporation, having its principal place of business at 954 Shoreline Drive, Barrington, Illinois 60010, L.H.C. CAPITAL CORPORATION, an Illinois corporation, having its principal place of business at 954 Shoreline Drive, Barrington, Illinois 60010, ORBITRON PRODUCTS, INC., a New York corporation, having its principal place of business at Suite 160, 4101 Edison Lakes Parkway, Mishawaka, Indiana 46545, and SCOTT LEFKY, having an office at 954 Shoreline Drive, Barrington, Illinois 60010, (each a direct or indirect "Shareholder of Seller" and collectively, "Shareholders of Seller"), and MERSEN, INC., an Indiana corporation, having its principal place of business at 335 N. Midland Avenue, Saddle Brook, New Jersey 07662-5591 ("Purchaser").

WHEREAS, Seller is engaged in the business of the manufacture and sale of rotational molded products in the United States and Canada (the "Business");

WHEREAS, Seller desires to sell and Purchaser desires to purchase substantially all of the assets, rights and interests of Seller related to the Business, excluding those assets set forth in Section 1.2 hereof, upon the terms and subject to the conditions herein provided; and

WHEREAS, Shareholders of Seller own, beneficially and of record, all of the outstanding capital stock of Seller;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I

PURCHASE AND SALE

1.1 Purchased Assets. Subject to the terms and conditions set forth in this Agreement and effective as of the close of business on August 31, 1993 (the "Effective Time"), Seller hereby agrees to sell, convey, assign, transfer and deliver to Purchaser, and Purchaser hereby agrees to purchase from Seller, on the Closing Date (as hereinafter defined), all of Seller's right, title and interest on the Closing Date in and to all of the business, assets, properties and goodwill of Seller relating to the Business, including, without limitation, all of Seller's right, title and interest in and to the following assets, but excluding those certain assets identified in Section 1.2 hereof (collectively, the "Purchased Assets"):

(a) All customer, trade and other accounts receivable arising from the operation of the Business and outstanding as of the Effective Time (the "Accounts Receivable").

(b) All inventories of raw materials, work in process, finished goods and shipping and packing supplies (whether on hand or in transit) owned by Seller and used or useable in the Business (the "Inventory").

(c) All equipment, machinery, office furniture and equipment, including computers and computer software, motor

vehicles, manufacturing and test equipment, production tooling, jigs and fixtures, molds and dies, spare parts and other tangible personal property owned by Seller and used or usable in the Business, including, without limitation, those items located in Seller's manufacturing facilities in Delphos, Ohio and those items listed in Schedule 1.1(c) hereto, and any additions to or replacements for such equipment, machinery, furniture, motor vehicles, tooling, jigs and fixtures, molds and dies, spare parts and other tangible personal property acquired by Seller prior to the Closing Date (as hereinafter defined) (collectively, the "Fixed Assets").

(d) All contracts, agreements, equipment leases and commitments of Seller relating to the operation of the Business, whether written or oral (other than collective bargaining agreements, employment agreements, deferred compensation agreements or commitments and other similar agreements and commitments of Seller relating to any independent contractors, employees or former employees of Seller) which (i) involve obligations of a party in excess of \$5,000, (ii) have a remaining term of more than one year, or (iii) involve real property, which contracts, agreements, equipment leases and commitments of a similar nature are listed or described in Schedule 1.1(d) hereto, including all amendments, waivers or other modifications thereto, and any additional contracts, agreements, equipment leases and commitments entered into by Seller relating to the operation of the Business between

the date hereof and the Closing Date in accordance with this Agreement which shall be listed in a supplement to Schedule 1.1(d) hereto (collectively, the "Contracts"). Copies of all Contracts (or written summaries thereof in the case of oral Contracts) listed or described in Schedule 1.1(d) have been furnished to Purchaser prior to the execution and delivery of this Agreement and copies of all Contracts (or written summaries thereof in the case of oral Contracts) entered into after the date hereof to and including the Closing Date shall be promptly furnished to Purchaser after the execution thereof.

(e) All unfilled sales orders relating to the Business received by Seller from customers in the ordinary course of business and existing as of the Closing Date (the "Unfilled Orders").

(f) All licenses, permits, franchises, approvals, certificates, authorizations and rights issued by any Federal, state or local government or otherwise relating to the Business, which licenses, permits, franchises, approvals, certificates, authorizations and rights are listed in Schedule 1.1(f) hereto (collectively, the "Permits").

(g) All patents, patent registrations and applications therefor, trademarks, trademark registrations and applications therefor, tradenames, service marks, logos and other identifying symbols, names or marks used or held for use in the Business and other intellectual property and privileges owned or licensed by

Seller in connection with the Business and all goodwill associated therewith, which patents, patent registrations and applications therefor and other intellectual property and privileges are listed in Schedule 1.1(g) hereto, as well as any rights to recovery for infringement and all other inventions, discoveries and improvements relating to the Business (collectively, the "Intellectual Rights").

(h) All technology, trade secrets, know-how, manufacturing processes and procedures, formulas, quality control procedures, test procedures, specifications, protocols, drawings, designs and all other proprietary information related to the Business, which shall be described in Schedule 1.1(h) hereto and all of which shall be delivered to Purchaser on or before the Closing Date in a manner in which Seller and Purchaser agree (collectively, the "Technology and Know-How").

(i) All customer lists and records, lists of vendors and suppliers, credit and sales records, product research and development records, quality control records, test results, logs, books, files, manuals, computer and electronic data processing material, product and sales literature, purchasing and shipping records, artwork, sales leads and marketing files, personnel records, correspondence and other business records pertaining to the Business (collectively, "Books and Records").

(j) All telephone and fax numbers used or held for use in the Business.

(k) Net revenues after expenses received by Seller in the ordinary course of the Business after the Effective Time and before the Closing Date.

1.2 Excluded Assets. The following assets of Seller are neither being sold by Seller nor purchased by Purchaser (the "Excluded Assets"):

(a) Any and all assets of Seller which are not related to the Business.

(b) Except to the extent attributable to net revenues received by Seller in the ordinary course of the Business after the Effective Time and before Closing, all cash, bank deposits, certificates of deposit, interest-bearing accounts, investment securities, notes receivable and other similar cash items and investment accounts of Seller, whether or not relating to the Business.

(c) Any prepaid taxes and expenses for periods prior to the Effective Time.

(d) The real property and manufacturing and office facilities of Seller located in Delphos, Ohio (including office structure and office equipment).

(e) The lease for Seller's offices located in Mishawaka, Indiana, and the office furniture and equipment located on such leased premises.

(f) Any refund for Federal, state or local franchise taxes or fees of any nature whatsoever for periods prior to the Effective Time.

(g) Corporate minute books, stock transfer records and tax records relating to Seller.

(h) Intellectual property rights described in the second paragraph of Schedule 1.1(h) hereto.

1.3 Assumed Liabilities. At the Closing (as hereinafter defined), Purchaser shall execute and deliver to Seller an agreement, substantially in the form attached hereto as Exhibit A (the "Assumption Agreement"), pursuant to which Purchaser shall assume (a) Seller's trade accounts payable incurred in the ordinary course of the Business and outstanding as of the Effective Time; and (b) the obligations and liabilities of Seller accruing after the Effective Time under the Contracts and all Unfilled Orders; and (c) all liabilities and obligations of the Business accruing after the Effective Time, prorated as of the Effective Time. Product liability shall be prorated by treating all sales which take place prior to Closing as sales with respect to which Seller retains product liability obligations and all sales which take place after Closing as sales with respect to which Purchaser retains product liability determined without regard to which entity manufactured the item. The liabilities and obligations to be assumed by Purchaser pursuant to the Assumption Agreement are hereinafter referred to collectively as the "Assumed Liabilities."

1.4 No Other Liabilities Assumed. Except as otherwise expressly provided in Section 1.3 hereof with respect to the Assumed Liabilities, Purchaser does not agree and shall not assume any liabilities or obligations of Seller of any kind or nature, known or unknown, matured or unmatured, absolute, contingent or otherwise, whether or not related to the Business, and Seller agrees to pay and discharge each and every liability or obligation of Seller when due, including, without limitation, any collective bargaining agreements, employment agreements, deferred compensation agreements or obligations or other similar agreements or obligations of Seller to any independent contractors, employees or former employees. Seller and Shareholders of Seller, jointly and severally among Shareholders of Seller, each agrees to indemnify, defend and hold harmless Purchaser, its officers, directors and shareholders from and against any and all liabilities, losses, damages, costs or expenses (including attorneys' fees and disbursements) incurred in connection with such liabilities and obligations. This indemnification obligation shall survive the Closing for the applicable statute of limitations period as to Seller and for two years as to Shareholders of Seller.

4.19 Employee Matters of Seller. Nothing in this Agreement shall confer upon any employee of Seller the right to continued employment after the Closing Date and nothing contained herein shall restrict any right of Purchaser to terminate Seller's employees at will. Seller acknowledges that Purchaser has not and

does not agree to assume any ERISA obligations or liabilities of Seller or of any prior owner of any of the Purchased Assets. Seller also acknowledges that Purchaser has not and does not agree to assume any employment, deferred compensation or other similar agreements or commitments of Seller or any benefit plans, programs, practices, policies or arrangements of Seller relating to employees, independent contractors or former employees of Seller and that should Purchaser elect to continue the employment of any of Seller's employees or a relationship with any of Seller's independent contractors, Purchaser shall have no liabilities or obligations with respect to Seller's employees or independent contractors for any periods prior to the Closing Date, including without limitation with respect to accrued vacation time, sick time or any tax withholding obligations in connection with any of Seller's employees or independent contractors.

4.20 Collective Bargaining Agreement and Multiemployer Plan of Seller. Seller acknowledges that Purchaser has not and does not agree to assume the collective bargaining agreement specified in Schedule 2.16(a) to which Seller is a party or subject, or any liabilities or obligations thereunder. Seller further acknowledges that Purchaser has not and does not agree to assume any obligations or liabilities of Seller or of any prior owner of any of the Purchased Assets with respect to any multiemployer plan (as defined in Section 3(37) of ERISA), including the multiemployer plan specified in Schedule 2.16(c), to which Seller or any such prior

owner has made contributions, including any liability under Section 4201 of ERISA for any complete or partial withdrawal from any multiemployer plan. Seller and Shareholders of Seller, jointly and severally among Shareholders of Seller, each agrees to indemnify and hold Purchaser, its officers, directors and shareholders harmless from and against any and all liabilities, losses, damages, costs or expenses (including attorneys' fees and disbursements) incurred by Purchaser in connection with or arising from Seller's breach of the covenants set forth in this Section 4.20. This indemnification obligation shall survive the Closing.

4.21 Lease. The parties hereto agree that, for a period of not more than six (6) months after the Closing, or such shorter period as Purchaser shall determine, Seller shall (a) lease to Purchaser, on the terms and conditions set forth in the form of lease attached as Exhibit E hereto, Seller's manufacturing and office facilities located in Delphos, Ohio, and (b) during said lease term, Seller, using its labor force, shall provide certain production services for the benefit of Purchaser, on the terms and conditions set forth in the form of Production Services Agreement attached as Exhibit E hereto.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first above written.

SELLER:

ORBITRON INDUSTRIES, INC.

By: *Thomas F. Cooper*

Thomas F. Cooper
President

SHAREHOLDERS OF SELLER:

LONGTERM INDUSTRIES, INC.

By: *Scott A. Leiby*

L.T.I.C. CAPITAL CORPORATION

By: *Scott A. Leiby*

Scott Leiby
President

ORBITRON PRODUCTS, INC.

By: *Thomas F. Leiby*

Thomas F. Leiby
President

Scott A. Leiby
SCOTT LEIBY

PURCHASER:

MEISE, INC.

By: *Ronald C. Midilli*

Ronald C. Midilli
President